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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,455	04/08/2004	Myles S. Douglas	ENDOLOG.054A	7278

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EXAMINER

TYSON, MELANIE RUANO

ART UNIT	PAPER NUMBER
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3773

NOTIFICATION DATE	DELIVERY MODE
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10/13/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary	Application No. 10/820,455	Applicant(s) DOUGLAS ET AL.	
	Examiner MELANIE TYSON	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 31-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 31-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This action is in response to the applicant's amendment submitted on 16 June 2009. Claims 19-30 remain cancelled. The amendments made to the claims do not place the application in condition for allowance for the reasons set forth below.

Response to Arguments

Applicant's arguments with respect to claims 1-18 and 31-45 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-18 and 31-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solovay (U.S. Patent No. 5,769,884), Shaolian et al. (U.S. Patent No. 6,197,049), and Yang (U.S. Patent No. 6,379,382 B1). Solovay discloses a stent graft

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(see entire document) comprising a tubular support (frame structure 22) and a porous tubular PTFE sheath on the tubular support (30). Solovay further discloses that pore spacing and dimensions in the sheath control the type and rate of cellular ingrowth (for example, see column 4, lines 25-28). Solovay teaches that in some portions of the device, healthy tissue and capillary ingrowth is desired to prevent the device from migrating and thus higher porosity is desired. Solovay also teaches that in some portions of the device ingrowth is undesired and thus lower porosity is desired to prevent unwanted damaged tissue ingrowth. Although Solovay illustrates a preferred embodiment, Solovay suggests modifications may be made in that porosity and pore diameters along the device may be modified depending on where along the length ingrowth is desired and is to be deterred (for example, see column 5, lines 46-40).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device such that the proximal and distal ends are configured to inhibit sufficient cellular ingrowth through the wall of the sheath to permit the formation of a viable neointimal layer on the luminal surface of the sheath at the ends if the intended application required such a configuration. Solovay fails to disclose the tubular support is structured as recited in the claims and that the sheath is formed of ePTFE material. However, Solovay discloses the tubular body may include any of the expandable frame structures as known in the art (for example, see column 1, line 66 - column 2, line 1 and column 7, lines 25-28) and the sheath may be formed from any suitable biocompatible polymer material well known in the art (for example, see column 7, lines 4-6).

Shaolian discloses a stent graft and teaches the stent is formed as a tubular wire support having all the configurations as claimed (see columns 6-21). The substitution of one known element (stent as shown in Shaolian) for another (stent as shown in Solovay) would have been obvious to one of ordinary skill in the art at the time of the invention since the substitution of the stents would have yielded predictable results, namely, providing an expandable body that sufficiently supports a blood vessel.

Yang discloses a stent graft and teaches porous ePTFE material is well known in the art for forming sheath portions of stent grafts (for example, see column 8, line 57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize a well known porous ePTFE material in Solovay as taught by Yang, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice.

With further respect to claims 2-10, 17, 31-43, it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the sheath having a density, a distance between nodes, and a water pressure entry within the ranges claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 7-7 (max flex)

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./
Examiner, Art Unit 3773
October 1, 2009

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773